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Social Networking as a Communications Weapon to Harm Victims: Facebook, MySpace, and Twitter Demonstrate a Need to Amend Section 230 of the Communications Decency Act

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SOCIAL NETWORKING AS A COMMUNICATIONS WEAPON TO HARM VICTIMS: FACEBOOK, MYSPACE, AND TWITTER DEMONSTRATE A NEED TO AMEND SECTION 230 OF THE COMMUNICATIONS DECENCY ACT

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I. INTRODUCTION

Online social networking allows individuals to communicate directly with friends, family, colleagues, and acquaintances using a variety of techniques such as posting online "status" updates, photos, videos, and instant messages. Popular online resources such as Twitter, Facebook, MySpace, and YouTube allow members to generate a variety of content for their followers. Many of these tools are used in innocent, harmless ways for individuals to connect with friends and family. While these applications enable the user to control content without direct third-party Internet Service Provider ("ISP") editorial assistance or censorship, there is a growing danger that this side of citizen-led media is generating an abundance of offensive, defamatory content.

Celebrities in Hollywood have also entered the social networking foray to expand their fan bases, a move that brings legal risk.[1] For example, on March 17, 2009, clothing designer Dawn Simorangkir, alleged she was the victim of a public online rant by musician and actress Courtney Love.[2] In her lawsuit filed on March 26, 2009, Simorangkir

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1. Kaplan, Ben, *Ashton Kutcher, Actor, Punk'r and Cheat'r?; Hyped Twitter Competition with CNN not all that it Claims to be,* NAT'L POST, Apr. 21, 2009 at AL1. In 2009 Ashton Kutcher competed against CNN in a contest over who could amass more followers on *Twitter*.

2. Civil Complaint at 6, Simorangkir v. Love, 2009 WL 798260 (LA Co. CA, *filed* March 26, 2009) (No. BC410593).

said that Love defamed her on Twitter.[3] She claimed that Love tweeted (communicated with her Twitter followers) that Simorangkir was a felon, had an illegal drug problem, and had a history of assault and burglary.[4]

Regardless of the outcome of this lawsuit, this incident illustrates the manner in which social networking tools may be used as conduits to post offensive, slanderous content. As websites like Twitter, Facebook, and YouTube grow in member-generated content, there is an ever-growing risk that individuals are posting illicit materials. So far in 2009, there are more than 250 pending lawsuits generally related to blogs, including some based on defamation.[5] The number of these types of lawsuits has more than doubled since 2008.[6]

Defamation occurs when an individual's reputation is harmed by a direct statement that is made public to a third-party audience.[7] Social networking tools such as Twitter and Facebook allow users to easily post this type of defamatory material in the public domain where it could be viewed by thousands or potentially millions of others. With the majority of online content created by private individuals, many Internet-based defamation lawsuits come from messages posted with the intent to threaten, harass, or defame a victim before a potentially large "audience" of followers. Recent court cases reflect a growing trend of individuals who used social networking as a public forum for posting harmful content.[8]

The lawsuit Simorangkir filed against Love illustrates that individuals, not their ISPs or other users, are responsible for the content they create. As some of the fastest growing communication tools, it is not surprising that Facebook, MySpace, and Twitter are often the social networking sources used in the growing number of incidents.

Several state and federal courts have consistently upheld Section 230 of the Communications Decency Act ("CDA") that exempts ISPs and other users from any responsibility related to offensive content posted on the Internet.[9] The law defines offensive content as material that is ob-

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3. *Id.*

4. *Id.*

5. Garry Marr, *Tweet This: You're Being Sued*, NAT'L POST, May 2, 2009, at FW5, *available at* http://www.nationalpost.com/scripts/story.html?id=1555623.

6. *Id.*

7. BLACK'S LAW DICTIONARY 341 (7th ed. 2000).

8. *See e.g.* Wolfe v. Fayettville, Ark. Sch. Dist. 600 F. Supp. 2d 1011 (W.D. Ark. 2009); ProtectMarriage.com v. Bowen, 599 F. Supp. 2d 1197 (E.D. Cal. 2009); Barrett v. Rosenthal, 146 P.3d 510 (Cal. 2006).

9. 47 U.S.C. §230 (c)(2) (2009) (stating: "No provider or user of an interactive computer service shall be held liable on account of. . . any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected"). *See* e.g. Green v. America

scene, lewd, excessively violent, or harassing.[10] Social networking tools make it possible for law enforcement agencies and courts to determine the actual identity of those perpetrating these offensive messages. Rather than use pseudonyms, many customers of these sites are now using their real identities when they link with their friends, family, and coworkers.

This article discusses how social networking sites can pose a danger to victims of online offensive content. Part II provides an overall analysis of the dangers the Internet, especially social networking, poses to victims. Part III reviews Section 230 of the CDA, including the "Good Samaritan" provisions for social networking websites such as Twitter and Facebook. Part IV analyzes three recent court cases that demonstrate how these social networking tools are used as weapons to harm victims. Part V concludes with a discussion of how the growing number of online incidents stem from social networking sites. It recommends that Congress should amend the CDA to clarify the penalty for individuals who post offensive content on the Internet, including social networking sites.

II. THE RISE OF DIGITAL FREE SPEECH AND THE DANGERS IT POSES

Yale Law School First Amendment scholar Jack Balkin recently noted that in the digital age of Internet communication, basic First Amendment values are critical: the freedom to express and promote ideas, opinion, and scholarship.[11] He compared the online environment of blogging, search engines, and social networking to the Enlightenment Era when the printing press was the technology for distributing books and pamphlets across Europe.[12] Balkin argued that what will define the future free speech legal debate related to the Internet will not be large, constitutional issues, but rather regulatory ones related to its business model and the activities of its users.[13]

Social networking tools such as Facebook and MySpace are a part of what is termed "Web 2.0." According to Cecilia Ziniti, Web 2.0 online services do not simply give users access to the Internet and a voice online. Rather, they "help find, manage, and explore the data within the

Online (AOL), 318 F.3d 465 (3rd Cir. 2003); Zeran v. America Online, Inc., 129 F.3d 327 (4th Cir. 1997); Blumenthal v. Drudge, 992 F.Supp. 44 (D.D.C. 1998).

10. 47 U.S.C. §230 (c)(2) (2009).

11. Jack M. Balkin, *Free Speech and Press in the Digital Age: The Future of the Free Expression in a Digital Age*, 36 PEPP. L. REV. 427 (2009).

12. *Id.*

13. *Id.*

web to make it useful."[14] The value of these social media tools is proportionate to the amount of data the websites help manage.[15] Web 2.0 programs rely on users to input their opinions through surveys and ratings to constantly improve service.[16] Customers rely on these Web 2.0 programs to help them sift through large amounts of content such as photos, blog entries, and video so their networked "friends" can quickly find specific content. These social network programs give customers the tools to publish their content.

Web 2.0 has expanded the "digital speech" that permeates our culture by allowing users to share continually interactive communications with one another.[17] A lot of this interaction is virtual communication within Facebook and MySpace communities. Jack Balkin argued that protecting free speech values in this digital age will not pose a problem for constitutional law but instead will be an administrative and technological challenge.[18] He cited network neutrality and intermediary liability as the keys to protecting online free speech. Balkin explained that the debate on network neutrality will be focused on whether corporate Internet providers stay editorially neutral about content.[19] Intermediary liability refers to the online companies who deliver content, such as Yahoo!, Facebook, or Google. Section 230 of the CDA immunizes these online companies from any liability for offensive messages placed on their communication platforms. Balkin believed that as long as network neutrality and intermediary liability do not interfere with content, then free speech will continue in the digital realm.[20] Another perspective on digital speech is that it is revolutionary because it presents a novel form for creating and disseminating content for people who may previously have been shut out of the public domain.[21] Caitlin Hall proposed in 2008 that digital speech offers forms of communication through social networks.[22]

Yet, despite the enhanced speech freedoms in online communication, there are dangers to potential victims in the legal areas of privacy, threats, emotional distress, and defamation. The Internet provides tools to mask one's identity, creating an environment that could lead to inci-

14. Cecilia Ziniti, *Annual Review 2008: CYBERLAW: Note: The Optimal Liability System for Online Service Providers: How Zeran v. America Online Got It Right and Web 2.0 Proves It,* 23 BERKELEY TECH L.J. 583, 592 (2008).

15. *Id.*

16. *Id.*

17. *Id.*

18. Balkin, *supra* note 11, at 442.

19. *Id.* at 431.

20. *Id.* at 433.

21. Caitlin Hall, Note, *A Regulatory Proposal for Digital Defamation: Conditioning § 230 Safe Harbor on the Provision of a Site "Rating*," 2008 STAN. TECH. L. REV. 1, 5 (2008).

22. *Id.*

dents of anonymous libel.[23] Hall noted that in the virtual world of the Internet, when a victim is libeled, the third-person viewing audience and any accompanying victim's rebuttal are ever-changing in a growing array of posted comments.[24]

Incidents of cyberharassment are on the rise.[25] Generically, in the offline world, "harassment" is defined as words or conduct that annoy, alarm, or cause emotional distress in the victim for no "legitimate" purpose.[26] According to Sarah Jameson, computers complicate the definition of harassment because they allow individuals to use e-mail or blogs to torment their victims.[27] The Internet allows people to conceal their identities causing further stress on a victim.[28] In 2008 Jameson used the term "cyberharassment" to include cyberstalking and cyberbullying.[29] She noted that the difference between cyberharassment and cyberstalking usually turns on perpetrators' objectives and motives for their behavior.[30] Cyberharassment is defined as an individual's attempt to frighten or embarrass the victim.[31] Conversely, "cyberstalking is characterized as a perpetrator relentlessly pursuing a victim online, likely in combination with an offline," real world attack.[32] Cyberbullying refers to intentionally aggressive behavior, often by children and teenagers, involving an imbalance of power or strength between aggressor and victim.[33]

The anonymity of the Internet creates a challenge in identifying public versus private spaces.[34] Jameson noted the Internet complicates privacy issues because information that is initially intended to be private easily becomes public.[35] The result is that thousands or even millions of online viewers can see information never intended for a large audience.[36] Jameson warned that this level of scrutiny can easily lead to an individual becoming the victim of cyberharassment based on private information in the public eye.[37]

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23. *Id.*
24. *Id.* at 4.
25. Sarah Jameson, *Cyberharassment: Striking a Balance Between Free Speech and Privacy*, 17 COMMLAW CONSPECTUS 231, 235 (2008).
26. *Id.* at 235.
27. *Id.*
28. *Id.*
29. *Id.*
30. *Id.* at 236.
31. Jameson, *supra* note 25, at 236.
32. *Id.*
33. *Id.* at 236.
34. *Id.* at 240.
35. *Id.*
36. *Id.*
37. Jameson, *supra* note 25, at 240.

III. HISTORY OF SECTION 230 OF THE CDA

When Congress passed into law the Telecommunications Act of 1996, it was aimed at deregulating the telecommunications industry, including ownership restrictions.[38] One part of the law, the CDA, exempted ISPs and other users of an interactive computer service from being held responsible for any posted materials from third-party users that are excessively violent, harassing, or defamatory.[39] This was enacted in order to promote self-regulation of the Internet without direct government oversight.[40]

Congress' goal in passing the CDA was to provide a legal framework for the Internet to flourish in several areas including political discourse, cultural development, intellectual development, and entertainment.[41] It opposed a law that restricted Internet growth. Instead, Congress tried to preserve the "free market nature" of the online communications medium.[42] Congress did not want ISPs bogged down by an avalanche of lawsuits related to questionable speech practices by third parties. It feared the potential for chilled online speech resulting from the 1995 decision of *Stratton Oakmont* [43] in New York. In *Stratton Oakmont*, the Nassau County Supreme Court held Prodigy Services liable for defamatory material posted on its "Money Talk" electronic bulletin board.[44] The court held that the ISP was the publisher of the website and responsible

38. Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 562 (Feb. 8, 1996).

39. 47 U.S.C.S. § 230(c)(2) (2009). Title 47 Telegraphs, Telephones, and Radiotelegraphs – Chapter 5 Wire or Radio Communication Common Carriers, Common Carrier Regulation states that:

> No provider or user of an interactive computer service shall be held liable on account of. . .any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected. *Id.*

40. *Id.*

41. 47 U.S.C. § 230(a)(3) (2009). "The Internet and other interactive computer services offer a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity." *Id.* Section (a)(4) states, "The Internet and other interactive computer services have flourished, to the benefit of all Americans, with a minimum of government regulation." *Id.* at § 230(a)(4). Section (a)(5) states, "Increasingly Americans are relying on interactive media for a variety of political, educational, cultural, and entertainment services." *Id.* at § 230(a)(5).

42. 47 U.S.C. § 230(b) (2009).

> It is the policy of the United States. . .(1) to promote the continued development of the Internet and other interactive computer services and other interactive media; (2) to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation. *Id.*

43. Stratton Oakmont, Inc. v. Prodigy Services Co., 1995 WL 323710, at *1 (N.Y. Sup. 1995).

44. *Id.*

for the editorial content posted by the Money Talk editorial staff.[45]

Congress responded to the *Stratton Oakmont* decision by passing Section 230 of the CDA. The 1996 Senate-House Conference Report stated that one of the goals of the law was to overrule *Stratton Oakmont* by granting ISPs an exemption from liability for objectionable material written by unknown third parties.[46] Congress did not want ISPs and other users to be treated as publishers or speakers of content that was not their own.[47]

Social networking websites such as Facebook and Twitter have specific guidelines that reflect Section 230's "Good Samaritan" clause.[48] The federal law states that "no provider of an interactive computer service shall be held liable [for offensive content if it makes a] good faith [effort] to restrict access or availability of the material."[49] Facebook's Statement of Rights and Responsibilities reflects the Good Samaritan clause as it expressively forbids content that intimidates, harasses, threatens, or is graphically violent.[50] Yet, it also says that it cannot solely patrol the site for offensive content, and Facebook asks its members for assistance.[51] Twitter's "Good Samaritan" clause is similar.[52] Twitter warns its customers not to harass or threaten others and not to use it generally for

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45. *Id.* at *13.

46. H.R. CONF. REP. NO. 104-458 (1996), *reprinted in* 1996 U.S.C.C.A.N. 10.

47. *Id.* at 194. The Conference Report stated:

> One of the specific purposes of this section is to overrule Stratton-Oakmont v. Prodigy and any other similar decisions which have treated such providers and users as publishers or speakers of content that is not their own because they have restricted access to objectionable material. The conferees believe that such decisions create serious obstacles to the important federal policy of empowering parents to determine the content of communications their children receive through interactive computers services. *Id.*

48. 47 USCS § 230(c) (2009).

49. *Id.* Section (c)(2) states:

> Civil liability. No provider or user of an interactive computer service shall be held liable on account of— (A) any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected. *Id.*

50. Facebook, *Statement of Rights and Responsibilities*, http://www.facebook.com/terms.php?ref=pf (last visited Sept. 22, 2009). Facebook's Safety Section of the Statement of Rights and Responsibilities specifically warns its users:

> 1.You will not bully, intimidate, or harass any user. 2.You will not post content that is hateful, threatening, pornographic, or that contains nudity or graphic or gratuitous violence. . .4.You will not develop or operate a third party application containing, or advertise or otherwise You will not use Facebook to do anything unlawful, misleading, malicious, or discriminatory. *Id.*

51. *Id.* Faceboook's Statement of Rights and Responsibilities: 3. Safety: "We do our best to keep Facebook safe, but we cannot guarantee it. We need your help in order to do that. . ."

52. Twitter, *Terms of Service*, http://twitter.com/tos (last visited Sept. 22, 2009).Twitter's Terms of Service include: "You must not abuse, harass, threaten, impersonate or in-

any illegal purposes.[53] By informing its customers not to post any offensive materials in violation of Section 230, both Facebook and Twitter adhere to the Good Samaritan clause of the law, in turn, granting them immunity from any illegal content posted by its customers.

ISPs such as America Online, MSN, or Yahoo! are typically classified as content distributors because they make information provided by third parties available to subscribers of their interactive computer services. According to the CDA, these ISPs are distributors of information and therefore are exempt from any liability.[54] While the law exempts ISPs as distributors of offensive information, it also excuses users of interactive computer services from being held liable when they repost online materials that are harassing or defamatory.[55] By exempting users, the legal distinction of who is a publisher of materials versus who is a distributor is important. "Users" can be a company or an individual who simply forwards materials on the Internet written by other third parties. Similar to ISPs, by law they are considered content distributors.

Federal and state courts have upheld Congress' authority to exempt ISPs from liability when defamatory or threatening statements are made on their servers.[56] They have ruled that the CDA exempts ISPs, but not the actual authors, of any offensive online materials, including those deemed threatening or defamatory. The first post-*Stratton Oakmont* decision was *Zeran v. American Online* in 1997.[57] In *Zeran*, Kenneth Zeran sued AOL because it did not remove messages from one of its bulletin boards that informed its members to call his telephone number to purchase "naughty Oklahoma T-Shirts."[58] This prank against Zeran was posted online after the April 19, 1995, Oklahoma City bombing of the Alfred P. Murrah Federal Building.[59] He repeatedly asked AOL to remove the bulletin board posting after receiving hundreds of angry telephone messages. AOL complied after the initial damage was done. Zeran sued AOL as both the publisher and distributor of the message.

A federal district court ruled that the 1996 CDA exempted ISPs such

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timidate other Twitter users. . .You may not use the Twitter.com service for any illegal or unauthorized purpose."

53. *Id.*

54. 47 U.S.C. § 230(c)(1) (2007). "No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider."

55. *Id.*

56. *See* Green v. America Online (AOL), 318 F.3d 465 (3rd Cir. 2003); Zeran v. America Online, Inc., 129 F.3d 327 (4th Cir. 1997); Blumenthal v. Drudge, 992 F.Supp. 44 (D.D.C. 1998).

57. *Zeran*, 129 F.3d at 327.

58. *Id.* at 328.

59. *Id.* at 329.

as AOL from any liability for defamatory messages.[60] The U.S. Court of Appeals for the Fourth Circuit upheld the decision.[61] The appellate court reiterated that the federal law exempts ISPs from any responsibility for what their customers say on their websites. The *Zeran* decision is often cited by other courts in similar lawsuits.[62]

While most court decisions centered on ISP liability for offensive content, there has been little litigation concerning non-ISP users who have also distributed similar content. In November 2006, the Supreme Court of California issued a ruling involving a private user who forwarded defamatory online material.[63] In *Barrett v. Rosenthal*, California's highest court overturned a court of appeals ruling that Ilena Rosenthal defamed plaintiffs Doctors Stephen Barrett and Timothy Polevoy in an online news group.[64] It ruled that Rosenthal did not violate Section 230 of the CDA which states "providers" or users will not be considered publishers or speakers of any information provided by another information content provider.[65]

In *Barrett*, Ilena Rosenthal forwarded a copy of an article, originally written by an unknown third party, to two health-themed news groups.[66] She received the article as an e-mail attachment from her co-defendant, Tim Bolen.[67] Bolen labeled the article "Opinion of Tim Bolen" even though it was originally written by an unknown party.[68] The article described the plaintiff, Dr. Barrett, as arrogant, emotionally disturbed, and a bully.[69] From the Court's perspective, the phrase "Opinion of Tim Bolen" did not change the defendants' statuses from users to publishers.[70] The California Supreme Court ruled that since Rosenthal was not the original author of the article, she was not responsible for its defamatory content.[71] As a "user" of the content, she did not violate Section 230 of the CDA. The Court noted that the immunity part of the statute does not just protect ISPs but users who repost any offensive material.[72] This

60. *Id.* at 329-30.

61. *Id.* at 335.

62. *See,* e.g., *Green*, 318 F.3d at 471; Blumenthal v. Drudge, 992 F. Supp. 44 (D.D.C. 1998).

63. *Barrett* , 146 P.3d at 510.

64. *Id.* at 529.

65. *Id.*

66. *Id.* at 514.

67. *Id.*

68. *Id*.

69. *Barrett,* 146 P.3d at 514.

70. *Id.* at 527.

71. *Id.*

72. *Id.*

federal immunity extends to state laws as well.[73]

In *Barrett*, the Court noted the danger of its ruling: "The prospect of blanket immunity for those who intentionally redistribute defamatory statements on the Internet has disturbing implications."[74] In upholding Section 230, the Court gave users the right to knowingly repost or forward offensive content even if they were not the original authors. In the concurring opinion, Justice Moreno warned that the court's ruling did not account for the danger of a "conspiracy" if a user actively works with a publisher to distribute defamatory materials online.[75] One person could use a pseudonym to electronically publish offensive information while the other person whose identity is not hidden has the legal authority to promote it by reposting and forwarding the content.

IV. SOCIAL NETWORKING USED AS A TOOL TO HARM

Three recent cases since January 2009 highlight how social networking websites such as Facebook and Twitter are now used as instruments to harm victims.[76] While the cases themselves share little in common, they do reflect how social networking can be used as a psychological weapon to intimidate, defame, and mobilize opinions against others.

A. California's 2008 Proposition 8 Ballot Initiative

In November 2008, California voters approved Proposition 8 that constitutionally defined marriage as an institution between a man and a woman.[77] One of the sponsors of Proposition 8 was The National Organization for Marriage ("NOM"). California's Political Reform Act of 1974 requires political campaign organizations, like NOM, to file financial contribution statements semi-annually.[78] NOM sued the California Secretary of State requesting it be exempt from the January 31, 2009 deadline for filing the statements.[79] It alleged that many of its financial contributors were threatened and harassed because of their support for Proposition 8.[80] During the campaign, threats were made in-person, by

73. *Id*. The court quoted from 47 USCS § 230 (e)(3) of the CDA: "Nothing in this law shall be construed to prevent any State from enforcing any State law that is consistent with this section. No cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section."

74. *Barrett,* 146 P.3d at 529.

75. *Id.*

76. *See* ProtectMarriage.com v. Bowen, 599 F.Supp. 2d 1197 (E.D. Cal. 2009); Wolfe v. Fayettville, Ark. Sch. Dist., 600 F.Supp. 2d 1011 (W.D. Ark. 2009); Civil Complaint at 6, Simorangkir v. Love, 2009 WL 798260 (LA Co. CA, *filed* March 26, 2009) (No. BC410593).

77. *ProtectMarriage.com*, 599 F. Supp. 2d at 1199.

78. Cal. Gov. Code § 84200 (2009).

79. *ProtectMarriage.com,* 599 F. Supp. 2d at 1197, 1199.

80. *Id.* at 1200.

telephone, and online against supporters of Proposition 8.[81]

One of the plaintiffs in the lawsuit, John Doe 1, donated funds to ProtectMarriage.com as an active supporter of the ballot initiative.[82] He alleged that opponents of Proposition 8 used Facebook to target him by organizing a boycott of his business. John Doe 1 considered this boycott to be a threat to his economic livelihood. He accused the supporters of Proposition 8 of sponsoring a paid link on Google that referenced his business as a supporter of the ballot measure.[83] Another plaintiff in *ProtectMarriage.com* who supported the ballot initiative alleged that he received harassing messages on his MySpace and Facebook accounts calling him a racist.[84] A third plaintiff, John Doe 9, unknowingly had his photo taken and, as a result of his public identity, received profane and harassing messages in his MySpace and Facebook accounts.[85] Since several of their contributors were threatened and harassed, the plaintiffs sought injunctive relief arguing they were entitled to an exemption from California's compelled financial disclosure laws.[86] John Doe #9 argued that this financial exemption is allowed under the state law when individuals believe their lives may be harmed if disclosure of names and donation amounts are reported.[87] John Doe #9 also challenged the constitutionality of the $100 contribution threshold for disclosure.[88]

In its decision the court acknowledged the threats the plaintiffs received during the course of the political campaign.[89] Citing to the United States Supreme Court's 1976 opinion, *Buckley v. Valeo*, the court acknowledged that in *Buckley* the Supreme Court left open the possibility that minor parties could seek immunity from financial disclosure requirements if there was a reasonable probability their contributors were suffering from threats, harassments, and reprisals.[90]

The court ruled that the difference between *Buckley*, and *ProtectMarriage.com* is that ProtectMarriage.com, as a political party, was

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81. *Id.* at 1201-02.

82. *Id.* at 1201.

83. *Id.*

84. *Id.* at 1203. John Doe 8 received messages that stated: "You're as bad as the racist white people who used to enjoy banning black people the same rights as them. The rest of the world is disgusted by your actions. Best start rethinking your position NOW!"

85. *ProtectMarriage.com,* 599 F.Supp 2d at 1203.

86. *Id.* at 1204.

87. *Id*.

88. *Id.*

89. *Id.* at 1212.

90. *Id. See also* Buckley v. Valeo, 424 U.S. 1, 96 (1976). In Buckley, the Court affirmed a lower appeals court decision on the government's interest in restricting influences stemming from the dependence of candidates on large campaign contributions, but the Court reversed the finding on expenditure ceilings and ruled it unconstitutional.

not a small, minor organization.[91] It had succeeded in persuading a majority of California voters to support its cause.[92] The court said this was a "far cry" from smaller political parties who rarely succeed at the ballot box.[93] *ProtectMarriage.com* enjoyed solid financial support unlike other minor political activist groups.[94] Its members hold the majority viewpoint in California which is unlikely to change: "there is no evidence that any of the Plaintiffs' contributors intend to retreat from the marketplace of ideas such that available discourse will be materially dismissed."[95]

In denying the financial disclosure exemption, the court in *ProtectMarriage.com* said the threats and harassments were directed at a small group of supporters out of thousands of contributors.[96] While the court condemned the offensive incidents, Judge Morrison England Jr. stated that the legality of the threats was not the issue before the court, but rather, his ruling reflected the exemption from financial disclosure law appealed by the plaintiffs.[97] He reminded the plaintiffs that they had the option to pursue separate legal action for the alleged incidents.[98]

B. Social Media Used as a Means of Student Harassment

In December 2006, a group of students in Fayetteville, Arkansas, formed a Facebook group against middle school student, Billy Wolfe, for his alleged homosexual orientation.[99] The Facebook page was used as a platform to call Wolfe a "little bitch."[100] An entry dated on March 8, 2007, by a student named "WS" said that he intended to ask a friend to beat up Wolfe.[101] That afternoon another student, "IT," punched him in the face.[102] Another violent incident against Wolfe was videotaped and posted on YouTube.[103] Further harassing statements were posted on Facebook again on March 25, 2008.[104]

Wolfe's family filed a lawsuit against the Fayettville school district and the middle school vice principal, Byron Zeagler, for sex discrimina-

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91. *ProtectMarriage.com*, 599 F.Supp.2d at 1214.
92. *Id.*
93. *Id.*
94. *Id.*
95. *Id.* at 1215.
96. *Id.* at 1217.
97. *ProtectMarriage.com*, 599 F. Supp. 2d at 1217.
98. *Id.*
99. Evie Blad, *Networking Web Sites Enable New Generation of Bullies*, Ark. Democrat-Gazette, Apr. 6, 2008, at 17.
100. *Wolfe,* 600 F. Supp. 2d at 1017. In the "Group Info" section of the Facebook page, the members wrote "[WW is] a little bitch. And [sic] a homosexual that NO ONE LIKES."
101. *Id.*
102. *Id.*
103. *Id.* at 1018.
104. *Id.*

tion, perceived sexual orientation discrimination, First Amendment retaliation, defamation, and false light.[105] Zeagler was named in the lawsuit because the family said he did little to protect Wolfe from the harassment, threats, and violence.[106] In the initial *Wolfe* hearing on the alleged complaints, the defendants sought dismissal for these claims.[107]

In its decision, the *Wolfe* court granted the defendant's motion to dismiss the sex discrimination complaints, but rejected their dismissal request on the First Amendment retaliation, defamation, and false light claims.[108] The court found that there was enough evidence to proceed to trial on these claims partly because Facebook was used as a social media outreach tool against Wolfe.[109] As this case proceeds to trial, which is currently set for May 2010, the content on Facebook and YouTube may well be used as evidence against the defense.

C. Courtney Love's Tweets Bring a Lawsuit

Another recent incident involving social networking as a tool to deliver offensive content occurred in March of 2009.[110] Clothing designer Dawn Simorangkir alleged that she was a victim of Twitter and MySpace rants by musician Courtney Love.[111] She sued Love in Los Angeles Superior Court for libel, false light, intentional infliction of emotional distress, interfering with her economic livelihood, and breach of contract.[112]

In the lawsuit, Simorangkir alleges that Love publicized malicious and false statements related to selling illegal drugs, a history of assault and burglary, a record of prostitution, and grand theft.[113] Simorangkir believes that Love's accusations have damaged her business along with her personal name and reputation.[114] The complaint lists several specific examples of MySpace and Twitter entries where Love allegedly defamed Simorangkir.[115] Many of the incidents occurred via Twitter in mid-March 2009.[116] For example, Simonrangkir stated that on March 17, 2009, Love tweeted that Simorangkir had a history of dealing co-

105. *Id.*
106. *Wolfe*, 600 F. Supp. 2d at 1017.
107. *Id.* at 1015.
108. *Id.* at 1024-25.
109. *Id.* at 1021.
110. *Simorangkir*, 2009 WL 798260.
111. *Id.* at 5.
112. *Id.* at 5 and 15-19.
113. *Id.* at 2.
114. *Id.*
115. *Id.* at 6.
116. *Simorangkir*, 2009 WL 798260 at 6.

caine, assault, and burglary.[117] The complaint listed ten tweets about Simonrangkir in a 21-minute period on March 17, 2009.[118] According to the plaintiff, Love also posted a long, defamatory statement on MySpace the same day.[119] If this case proceeds to trial, Love's alleged comments on Twitter and MySpace would play an important role in its outcome.

V. CONCLUSION

Unlike *ProtectMarriage.com* and *Wolfe*, the proceedings in *Simorangkir v. Love* reflect how social networking was the sole source of communication used to possibly defame and invade the privacy of a victim. As it becomes the norm in citizen-led media, there will doubtlessly be more incidents of offensive material posted on Facebook or Twitter. While Section 230 of the CDA immunizes ISPs, more individuals will be held accountable for the content of their writings.

How users of social networking are held accountable will come at the intersection of traditional libel and privacy laws and modern online communication technology. Congress could be the source of clarification. Section 230 defines offensive content as material that is "obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable."[120] Since the definition of offensive content exists, Congress should clarify who is exempt and who is liable. Because ISPs and users are exempt based on the Good Samaritan provisions, Congress should amend the law so that individuals who create offensive content and post it directly on the Internet are liable and subject to prosecution. This would include messages that are defamatory, harassing, invade one's privacy, and generally damage a victim's reputation.

If Congress does not take the initiative in clarifying the legal responsibilities of individuals, then states should revisit their own defamation, threat, harassment, and privacy laws. Each state may have to include provisions for Internet content that harms a victim in these legal areas. Yet, even if state governments take this initiative, Section 230 of the CDA could still trump any state law. Section 230 has a provision that

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117. *Id.* Love allegedly posted on Twitter that: "austin police are more than ecstatic to pick her up she has a history of dealing cocaine lost all custody of her child, assault and burglary" (published by Love on twitter.com/courtneylover79, March 17, 2009 at 7:27 PM).

118. *Id.* at 6-7.

119. *Id.* at 8-14. Alleged MySpace postings included: "she remain a nasty piece of work until she stops this madness and realizes that being in possession of half a MILLION dollars worth of investments that took 7/8 years to collect is precious and to have a major magazine doing a piece onnothing but her stuff, and 40 GRAND is far too much, she should be on her knees praying to whatever god she has (she's a nihilistic black cludof negativity hoverer higher poweris i don't want it!)" (published by Love on www.myspace.com/courtneylove on March 17, 2009, at 12:55 AM).

120. 47 U.S.C. § 230(c)(2) (2009).

overrides state law if those state codes attempt to supersede the CDA.[121] In its *Barrett* decision, the California Supreme Court ruled that the CDA was the controlling legal authority in that state-based lawsuit.[122] The Court noted that its decision was a literal interpretation of the CDA.[123] The *Barrett* decision created a legal paradigm that suggests the CDA should be the law that holds individuals accountable for any offensive content they post via social networking sites.

Congress or the states must act sooner rather than later. The number of alleged incidents related to offensive content posted on social networking sites such as Facebook or Twitter will only continue to rise. The alleged incidents in *ProtectMarriage.com*, *Wolfe*, and *Simorangkir* reflect only a small number of court cases in this legal area. The courts may well need further guidance from federal or state laws to assist them in adjudicating these matters.

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121. 47 U.S.C. § 230(e)(3) (2009). "State law. Nothing in this section shall be construed to prevent any State from enforcing any State law that is consistent with this section. No cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section." *Id.*

122. *Barrett*, 146 P.3d at 529.

123. *Id.*